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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,396	02/11/2004	Timothy A. Spahr	1747 (TI-03-12)	1940

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FERRELLS, PLLC  
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EXAMINER
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CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/26/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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**Office Action Summary**

Application No.

10/776,396

Applicant(s)

SPAHR, TIMOTHY A.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 18-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☒ Claim(s) 30 and 31 is/are objected to.
- 8) ☒ Claim(s) 1-31 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 6-18-04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-17, 30 and 31, drawn to a fuel container, classified in class 220, subclass 562.
- II. Claims 18-28, drawn to a method of making by blow molding, classified in class 264, subclass 500.
- III. Claim 29, drawn to a method of making by co-injection molding, classified in class 264, subclass unknown.

The inventions are distinct, each from the other because of the following reasons:

Inventions (II and III) and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product can be made by different processes than the blow molding and co-injection molding methods, for example the separate parts can be molded in separate injection molds and the separate parts can be made from separate flat sheets shaped by tools without the use of air to expand the material.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Michael Ferrell on November 3, 2006 a provisional election was made with traverse to prosecute the invention of the fuel container

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(Group I), claims 1-17 and 30-31. Affirmation of this election must be made by applicant in replying to this Office action. Claims 18-29 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claims 30 and 31 are objected to as being incomplete. Claim 30 is dependent on claim 37, where claim 37 has not been presented. Claim 31 is dependent on claim 38, where claim 38 has not been presented.

Claims 30 and 31 will not be further treated according to their merits.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites that the two layers are optionally mechanically linked at copular regions. The presence of an optional limitation makes the claim unclear as the metes and bounds of the claim can't be determined since it is not known whether the limitation is part of the claim or not.

The below art rejections are applied insofar as the optional limitation is deemed not to be part of claim 1.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 4-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Short in view of McLeod.

Short discloses a fuel container comprising an inner barrier layer 34 in intimate unbonded surface-to-surface contact with an outer polyolefin layer 30. Short discloses the invention except for the inner layer being polyacetal and the capacity being 5 gal. or less. McLeod discloses a polyacetal inner layer. It would have been obvious to modify the inner layer to be polyacetal because Short specifically seeks a layer resistant to fuel permeation as stated in col. 3, lines 20-21 and McLeod specifically provides an inner layer of polyacetal particularly for its fuel barrier property as stated in paragraph 26. It would have been obvious to reduce the size of a fuel tank to the size of 5 gal. or less and even 1 quart or less as a matter of design choice in sizing the tank to the apparatus being fueled for the reason of reducing weight and bulk (dimensional) size by reducing the volume of fuel and the dimensions of the fuel tank and to promote safety as the total amount of fuel involved is decreased. These fuel capacities are generally known for reserve tanks, model airplanes, small engine lawn machines such as gas string trimmers and gas blowers.

The dimensional limitations of claims 8 and 11-14 are disclosed by Short.

Re claims 5 and 6, Official notice is taken that the compositions of polyacetal copolymer of trioxane and ethylene oxide and polyacetal copolymer of trioxane and 1, 3-dioxolane are well known polyacetal copolymers. It would have been obvious to modify the polyacetal copolymer to be one of the two mentioned above in order to make the container from a readily available resin rather than a less available resin.

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Re claims 9 and 10, it would have been obvious as a matter of design choice to modify the thickness to be within these ranges as a reduction reduces the weight of the container and reduces the cost of the resin used to make the container.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Short in view of McLeod as applied to claim 1 above, and further in view of Spry et al. (Spry).

The combination of Short and McLeod discloses the invention except for the copular regions. Spry teaches copular regions only at one side of the fuel tank, two layers are coupled together at the fuel inlet and the vehicle computer to fuel container connection only. The surface area of coupling appears to be less than 1% and certainly less than 5% of the total surface area between layers. It would have been obvious to modify the fuel container of Short to have copular regions as taught by Spry in order to provide separate parts which may be replaced if one part becomes damaged alleviating the expense of replacing the entire fuel unit.


If it should be deemed that the fuel container has copular regions of greater than 5% or 1% then it would have been obvious to reduce one or the other of the connections and also to reduce the surface area of contact to reduce the size of the connection fittings to save weight and cost associated with larger parts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3781

sjc